**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 24 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KATHLEEN BARNARD,

Plaintiff - Appellant,

v.

COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION,

Defendant - Appellee.

No. 06-35507

D.C. No. CV-05-00068-GMK

MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Submitted May 9, 2008[**]
Portland, Oregon

Before: TALLMAN and CLIFTON, Circuit Judges, and CARROLL[***], District Judge.

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Earl H. Carroll, Senior United States District Judge, District of Arizona, sitting by designation.

Kathleen Barnard appeals the district court's decision affirming the Social Security Commissioner's decision that she was not disabled within the meaning of the Social Security Act and was ineligible for benefits. We affirm.

We review de novo the district court's order affirming the administrative law judge's denial of benefits. *Lewis v. Apfel*, 236 F.3d 503, 509 (9th Cir. 2001). The agency's decision must be affirmed if it was supported by substantial evidence and based on the application of correct legal standards. *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).

We reject Barnard's argument that the ALJ erred by not further developing the record of her psychological and mental impairments. The ALJ's duty to develop the record fully is triggered when there is ambiguous evidence or when the record is inadequate. *See Mayes v. Massanari*, 276 F.3d 453, 459-60 (9th Cir. 2001). The record for evaluating the claimant's mental condition during the relevant period was adequately developed by an initial hearing and upon the stipulated remand from the district court. Barnard's psychological problems were not diagnosed until five years after the date last insured.

Barnard also argues that the ALJ erred in rejecting a treating physician's conclusions drawn nine months after the date last insured. We disagree. An ALJ should ordinarily give great weight to a treating physician's findings in disability

cases. *See Batson*, 359 F.3d at 1195 (citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)). When these findings conflict with the opinion of other doctors, however, the ALJ may reject the testimony so long as he provides "specific and legitimate reasons that are supported by substantial evidence." *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005); *see also Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995) (holding that clear and convincing reasons are not required to reject contradicted conclusions of a treating physician). The ALJ pointed to inconsistencies in the doctor's opinion, her reliance on Barnard's subjective complaints, and clinical observations of two prior physicians that did not corroborate the doctor's conclusion. The ALJ is responsible for resolving conflicts and ambiguity in medical evidence. *See Lewis*, 236 F.3d at 509. He has done so here; we will not substitute our judgment for his. *See Reddick v. Chater*, 157 F.3d 715, 720-21 (9th Cir 1998).

The ALJ's determination that Barnard was not credible was supported by "specific, clear and convincing reasons." *See Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007) (citing *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)). The ALJ cited Barnard's reported lack of cooperative effort during physical evaluations as a reason to reject her testimony. This is a sufficient reason. *See Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002). Furthermore, the ALJ

concluded that Barnard's husband and a long-time friend testified to a level of debilitation that could not be supported by medical evidence. This is a valid reason for rejecting lay witness testimony. *See Lewis*, 236 F.3d at 511; *see also Vincent ex rel. Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984) ("Although courts have upheld the use of lay testimony in some instances, it is not the equivalent of medically acceptable diagnostic techniques that are ordinarily relied upon to establish a disability.") (internal quotation marks and citations omitted).

Contrary to Barnard's argument, the ALJ's hypothetical question to the vocational expert was based on medical assumptions that reflected the claimant's limitations. *See Roberts v. Shalala*, 66 F.3d 179, 184 (9th Cir. 1995). Barnard argues that the ALJ neglected to include limitations relating to an injury received a decade prior to the date last insured or her perceived limitations based on subjective measures of pain and fatigue. We find no error in these omissions.

Finally, the ALJ did not err when he failed to determine a date of disability onset. This must be done only after a claimant is found disabled. *See Crane v. Shalala*, 76 F. 3d 251, 255 (9th Cir. 1995). The ALJ did not need to determine an onset date because the ALJ properly concluded that Barnard was not disabled at the last date insured, and that conclusion was supported by substantial evidence.

**AFFIRMED**.